IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
TRANS WORLD AIRLINES, INC., et al.,	)	Case No. 01-0056-PJW
	)	
Debtors.	)	
	)	
HIGH RIVER LIMITED PARTNERSHIP, KARABU CORP. and LOWESTFARE.com, LLC,	)	
	)	
Appellants,	)	
	)	
v.	)	Civil Action No. 01-226-SLR
	)	(Appeal Nos. 01-18, 01-27 and 01-28)
TRANS WORLD AIRLINES, INC., et al.,	)	
	)	
Appellees.	)	

MEMORANDUM ORDER

At Wilmington, this 26th day of March, 2002;

IT IS ORDERED that debtors' motion to dismiss as moot the appeals filed by the High River Entities challenging the bankruptcy court's authorization of the Key Employee Retention Plan, rejection of the Karabu Ticket Agreement, and March 12, 2001 Sale Order (D.I. 11) is granted for the reasons that follow:

1. This court has jurisdiction to hear an appeal from the bankruptcy court pursuant to 28 U.S.C. § 158(a). In undertaking a review of the issues on appeal, the court applies a clearly erroneous standard to the bankruptcy court's findings of fact and a plenary standard to that court's legal conclusions. See Am. Flint Glass Workers Union v. Anchor Resolution Corp., 197 F.3d

76, 80 (3d Cir. 1999). With mixed questions of law and fact, the court must accept the bankruptcy court's "finding of historical or narrative facts unless clearly erroneous, but exercise[s] 'plenary review of the [bankruptcy] court's choice and interpretation of legal precepts and its application of those precepts to the historical facts.'" Mellon Bank, N.A. v. Metro Communications, Inc., 945 F.2d 635, 642 (3d Cir. 1991) (citing Universal Minerals, Inc. v. C.A. Hughes & Co., 669 F.2d 98, 101-02 (3d Cir. 1981)).

2. **Appeal of the Sale Order.** To promote certainty and finality in bankruptcy sales, 11 U.S.C. § 363(m) prohibits the reversal of a sale to a good faith purchaser of bankruptcy estate property if an objecting party failed to obtain a stay of the sale. See Cinicola v. Scharffenberger, 248 F.3d 110, 121 (3d Cir. 2001). The statute provides:

> The reversal or modification on appeal of an authorization . . . of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). Thus, before an appeal of an order approving the sale of property to a good faith purchaser can be deemed moot, two conditions must be satisfied: (1) the underlying sale must not have been stayed pending appeal, and (2) reversing or

modifying the authorization to sell would affect the validity of the sale. See Krebs Chrysler-Plymouth, Inc. v. Valley Motors, Inc., 141 F.3d 490, 499 (3d Cir. 1998).

a. Appellants contend that the bankruptcy court erroneously determined that debtors' transaction with AMR Corporation ("American") was consummated in good faith and, therefore, their appeal of the Sale Order is not moot pursuant to § 363(m). The court finds that the bankruptcy court correctly concluded that American's purchase of substantially all of debtors' assets was "at arm's length, negotiated in good faith and for fair value." (D.I. 10, Ex. 1 at ¶ 12) After careful examination of the voluminous record, the bankruptcy court determined that there was "no evidence of unlawful insider influence or improper conduct," nor was there "any evidence of fraud or collusion between American and [debtors], or American and other bidders." (Id.) The bankruptcy court based this finding on evidence of record that a Section 363 sale within sixty days of the bankruptcy petition was the only way for debtors to avoid a piecemeal liquidation of their assets[1]

[1]In their emergency motion for a stay of the Sale Order pending appeal, appellants argued that the evidence "established that the timing of this bankruptcy filing and the expedited nature of the bidding process was orchestrated by American to preclude or 'chill' other bids." (Bankr. D.I. 1021 at 10) The bankruptcy court appropriately rejected this argument because of evidence supporting debtors' dire financial situation and the need to make Section 1110 payments to debtors' aircraft lessors by March 12, 2001. (D.I. 10, Ex. 1 at ¶¶ 17-18)

(debtors possessed inadequate capital to sustain a self-help plan), the only "strategic transaction" available to debtors was American's proposal,[2] and debtors bargained with American to obtain "meaningful concessions" over American's initial bid. (Id. at ¶¶ 10, 16-18, 20-25, 59) This court concurs with the bankruptcy court's assessment and finds no evidence in the record to suggest any bad faith or collusion surrounding debtors' transaction with American. Thus, the High River Entities' appeal of the Sale Order is moot pursuant to § 363(m).

3. **Appeals of the Key Employee Retention Plan and Rejection of the Karabu Ticket Agreement.** The court also finds that the appeals of the bankruptcy court's authorization of the Key Employee Retention Plan and rejection of the Karabu Ticket Agreement are equitably moot pursuant to In re Continental

[2]The bankruptcy court determined that the proposal offered by Carl Icahn's organization, TWA Acquisition Group, Inc., was "completely inadequate as an 'alternative transaction' proposal contemplated by the Bidding Procedures Order." (D.I. 10, Ex. 1 at ¶ 39) "It made no commitment to [debtors], it was not a binding agreement to propose a plan; it had no realistic or detailed plan for preserving [debtors] as a standalone entity; and it was submitted without the $50 million deposit." (Id.) Mr. Icahn's revised DIP proposals were also "not viable or meritorious alternative transactions" and "procedurally defective." (Id. at ¶ 49) "American complied with, and was the only entity that complied with, the Bidding Procedures Order." (Id. at ¶ 46)

Airlines, 91 F.3d 553 (3d Cir. 1996) (en banc) for the following reasons:[3]

a. Under the doctrine of equitable mootness, an appeal should be dismissed, even if the court has jurisdiction and could fashion relief, if the implementation of that relief would be inequitable. See id. at 559. The court should consider several prudential factors when evaluating equitable mootness, including: (1) whether the reorganization plan has been substantially consummated, (2) whether a stay has been obtained, (3) whether the relief requested would affect the success of the plan, (4) whether the relief requested would affect the rights of the parties not before the court, and (5) the public policy of affording finality to bankruptcy judgments. See id. at 560. These "factors are given varying weight, depending on the particular circumstances, but the foremost consideration is whether the reorganization plan has been substantially consummated." In re PWS Holding Corp., 228 F.3d 224, 236 (3d Cir. 2000).

b. **Substantial Consummation of the Plan.** Debtors' plan was substantially consummated on April 9, 2001, when sale of substantially all of debtors' assets to American was completed.

[3]The court declines to apply § 363(m) as the vehicle for dismissing these appeals as moot, as suggested by debtors.

c. **Obtaining a Stay.** The failure to obtain a stay favors dismissal for equitable mootness. See Continental, 91 F.3d at 562. Here, appellants unsuccessfully moved for a stay pending appeal in the bankruptcy court, district court and Third Circuit.

d. **The Success of the Plan.** If the requested relief has an "integral nexus" with the reorganization plan such that it would cause the "reversal or unraveling" of the plan, dismissal for equitable mootness is favored. See PWS Holding Corp., 228 F.3d at 236. In this case, the rejection of the Karabu Ticket Agreement was a condition of the consummation of debtors' transaction with American. (D.I. 10, Ex. 2 at 6-7, 11-12) Although the benefit to debtors' management under the Key Employee Retention Plan was not contingent on the sale to American in particular, a management retention program would be a fundamental component of any plan of reorganization chosen by debtor. (Id., Ex. 1 at ¶ 19, Ex. 2 at 7-8) Granting appellants' requested relief would disrupt debtors' sale of substantially all of its assets to American.

e. **Parties Not Before the Court.** Because the Key Employee Retention Plan and rejection of the Karabu Ticket Agreement are intertwined with the sale of debtors' assets, a determination here will affect all third parties with an economic stake in the sale, including debtors' 20,000 employees, the St.

Louis region, and consumers who have purchased TWA tickets that American has assumed. (D.I. 10, Ex. 1 at ¶ 74)

f. **Finality.** The ability of the parties to rely on the orders of the bankruptcy court weighs in favor of dismissing the appeal for equitable mootness. See In re Zenith Elecs. Corp., Nos. 99-746, 99-747, 00-399, 2002 WL 226242, at *4 (D. Del. Feb. 11, 2002).

IT IS FURTHER ORDERED that appellants' motion to vacate the underlying bankruptcy orders (D.I. 13) is denied. The appeals are moot based on statutory and equitable grounds, and not pursuant to Article III, therefore, the Munsingwear doctrine does not apply. See generally Cinicola, 248 F.3d 110 (distinguishing between constitutional mootness and statutory mootness in bankruptcy context). See also In re Highway Truck Drivers & Helpers Local Union No. 107, 888 F.2d 293, 299 (3d Cir. 1989) (vacating district court judgment pursuant to Munsingwear because matter was mooted by intervening judgment of state Supreme Court relieving debtor of liability to appealing creditors).

IT IS FURTHER ORDERED that appellants' motion to consolidate (D.I. 5) is denied as moot.

Sue L. Robinson
United States District Judge